

Article 8.

Testamentary Additions to Trusts.

§ 31-47. Testamentary additions to trusts.

- (a) A will may validly devise property to:
 - (1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or
 - (2) The trustee of a trust to be established at the testator's death, if the trust is identified in the testator's will and its terms are set forth in a written instrument executed before or concurrently with the execution of the testator's will, regardless of the existence, size, or character of the corpus of the trust during the testator's lifetime.

The devise is not invalid because the trust is amendable or revocable, or because the trust instrument or any amendment thereto was not executed in the manner required for wills, or because the trust was amended after the execution of the testator's will or after the testator's death. A revocable trust to which property is first transferred under subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and, as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter 36C of the General Statutes.

(b) Unless the testator's will provides otherwise, property devised to the trustee of a trust described in subsection (a) of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

(d) A devise to a trust shall be construed as a devise to the trustee of that trust.

(e) For purposes of this section, "devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(f) Nothing in this section alters, amends, or in any manner affects the application of the doctrine of acts of independent significance. (1955, c. 388; 1957, c. 783, s. 1; 1975, c. 161; 2007-184, s. 1.)